IN THE HIGH COURT OF PUNAJB AND HARYANA AT CHANDIGARH

Date of Decision: December 21, 2007

Jagir Singh Bhullar ..... Petitioner

versus

Union of India and others ..... Respondents

CORAM

HON'BLE MR.JUSTICE HEMANT GUPTA.
HON'BLE MR.JUSTICE MOHINDER PAL

1.Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3.Whether the judgment should be reported in the Digest ?

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Present: Shri Sukhwinder Singh, Advocate for the petitioner

Shri Rajiv Sharma, Advocate for respondents No.1 to 3

HEMANT GUPTA, J.

The challenge in the present writ petition is to the order dated 11.08.2006 (Annexure P-1) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter to be referred as "the Tribunal") constituted under the Administrative Tribunals Act, 1985.

The petitioner, while working in Intelligence Bureau under the Ministry of Home Affairs, was detained for the offences under sections 420, 467, 468, 465, 471 and 419 read with section 120-B of the Indian Penal Code in FIR No. 141 dated 16.11.1989. The petitioner was arrested in November,1989. He was released on bail on 28.02.1990. On account of his arrest, the petitioner was placed under suspension on 28.11.1989 vide order

Annexure P-1. Such order of suspension was revoked on 20.06.2001, Annexure P-5.

The criminal case registered against the petitioner was withdrawn with the permission of the Court on 29.03.2001 with the following concluding para :-

> " Consequent upon my aforesaid discussion, I am of the opinion that the permission for the withdrawal of the case should be granted because the parties have admitted/ compromised the matter and the accused have been facing trial for more than 11 years. In my opinion, the public interest will be served better, if the permission sought is granted. Accordingly, I allow the application and the accused are accordingly acquitted of the charges framed against them."

Thereafter, a charge-sheet dated 22.03.2002 under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules 1965 was issued to the petitioner. The statement of articles of charge was in respect of failure to maintain absolute integrity on account of his involvement in the aforesaid criminal case. The said charge-sheet was withdrawn on 10.03.2003.

On 12.03.2003, a show cause notice was issued to the petitioner pointing out that suspension of the petitioner from 20.11.1989 to 19.06.2001 cannot be construed as wholly unjustified and the said period was proposed to be treated as non duty for all purposes except pensionary benefits. However, the subsistence allowance already paid to the petitioner for the suspension period was not to be recovered. After considering the reply filed, an order has been passed on 6.5.2003 holding that suspension for the period from 20.11.1989 to 19.06.2001cannot be construed as wholly unjustified and, as such, the entire suspension period was treated as non

duty period for all purposes except pensionary benefits under the provision of sub-rule (5) of Rule 54-B of Fundamental Rules. However, the subsistence allowance already paid to the petitioner was not to be recovered. The said order, Annexure P-10, was affirmed by the learned Appellate Authority as well on 12.01.2005 (Annexure P-11).

Aggrieved against the orders Annexure P-10 and P-11, the petitioner invoked the jurisdiction of the Tribunal. The learned Tribunal vide order dated 11.08.2006, relying inter alia on judgment of Hon'ble Supreme Court reported as **The Management of Reserve Bank of India, New Delhi vs. Bhopal Singh Panchal, AIR 1994 SC 552** dismissed the application.

The learned counsel for the petitioner has vehemently argued that the order passed by the learned Tribunal is wholly illegal and proceeds on wrong assumption of law. The petitioner has not been granted the benefit of doubt in criminal trial. In fact, the case itself has been withdrawn. The affect of such withdrawal is as if the petitioner has never been prosecuted for a criminal offence. Thus, the suspension of the petitioner cannot be said be justified and consequently the petitioner is entitled to arrears of salary for the aforesaid period. On the other hand, learned counsel for the respondents has relied upon Fundamental Rule 54-B to contend that the competent authority to order re-instatement has made a specific order regarding pay and allowances to be paid to the government servant. The competent authority was to consider whether the suspension was wholly unjustified. If such suspension was wholly unjustified, petitioner would be entitled to full pay and allowances. Rule 54-B of the Fundamental Rules reads as under:-

> " F.R. 54-B. (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for

his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and made a specific order :-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2)Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3)Whether the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided .. xx xx xx xx xx xx xx

(4)In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5)In cases other than those falling under sub-rules (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended , as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall

exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(6) To (9) xx xx xx xx xx xx xx xx"

A perusal of the above rule would show that the petitioner shall be entitled to full pay and allowances only if the competent authority to order reinstatement is of the opinion that the suspension was wholly unjustified. The issue which is required to be examined is whether suspension of the petitioner consequent to his arrest in the aforesaid FIR can be said to be wholly unjustified. The petitioner was arrested on the basis of a complaint which led to the lodging of the FIR. The petitioner remained in jail for a period of more than three months. The criminal trial against him remained pending for more than eleven years when the same was withdrawn with the permission of the Court having compromised the matter. The arrest of the petitioner and the trial faced by the petitioner are the circumstances for which the department has no role to play. With this background, can it be said that the petitioner is entitled to fully pay and allowances for the period when he did not work for the department and, in fact, was facing trial.

Hon'ble Supreme Court in **Bhopal Singh Panchal' s case (supra)** was considering a case where an employee of the Reserve Bank of India was convicted under section 304, Part I of the Indian Penal Code but he was acquitted in appeal giving the benefit of doubt. The services of the said employee were dismissed in pursuance of the judgment of the trial Court. The employee sought pay and allowances for the period of his suspension till the date of his dismissal consequent to the order of reinstatement. The Court held to the following effect:-

" ..... The competent authority while deciding whether an

> employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent,if any, and whether the period is to be treated as on duty or on leave, has to take into consideration for circumstances of each case. I tis only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period. In other words, the Regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. During this period, the employee renders no work. He is absent for reasons of his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of 'no work, no pay' and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank's power in that behalf is unassailable".

In view of the aforesaid judgment, the petitioner did not discharge his duties on account of his involvement in a criminal case. The respondents are in no way responsible for keeping him away from the duties. The petitioner was facing a criminal trial for the past eleven years though the trial has ended on account of withdrawal of the case but it cannot be said that the suspension of the petitioner during the pendency of the criminal trial was wholly unjustified. The authorities have passed an order in terms of Fundamental Rule 54-B so as to consider the claim of the petitioner for payment of full pay and allowances for the intervening period. The said period has been ordered to be taken into consideration for

pensionary benefits. In these circumstances, we are of the opinion that the order passed is wholly justified and legal. It cannot be said that the petitioner is entitled to wages for the entire period from the respondents though he has not worked for the said period.

In view of the above, we do not find any merit in the present writ petition. The same is dismissed accordingly.

(HEMANT GUPTA)
JUDGE

December 21, 2007
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(MOHINDER PAL)
JUDGE